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IN THE SUPREME COURT OF THE UNITED STATES

October Term, [illegible]

HOWARD UNIVERSITY, a Corporation, Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF IN OPPOSITION.

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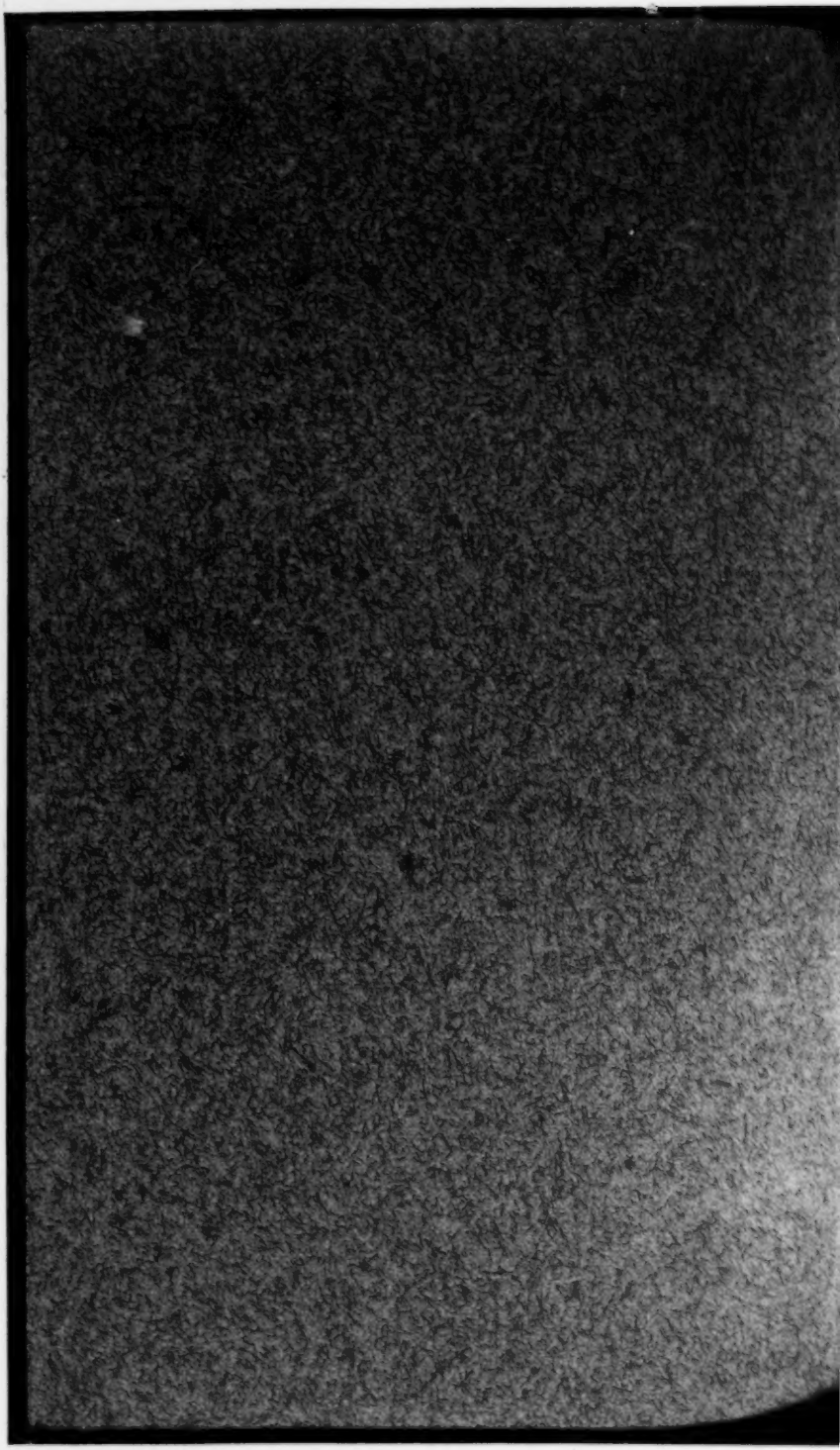

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BRIEF IN OPPOSITION

OPINIONS BELOW

The findings of fact, conclusions of law and opinion of the Board of Tax Appeals for the District of Columbia (R. 13-23) are not yet reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 93-102) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals (R. 102) was entered March 18, 1946. Petition for rehearing was filed April 1, 1946, and denied April 3, 1946 (R. 103). The petition for writ of certiorari was filed in this Court on June 10, 1946. The jurisdiction of this court rests on Section 240(a) of the Judicial Code, as amended by the Act of Feburary 13, 1925 (43 Stat. 936, 938, c. 229; U. S. Code, 1940 ed., Title 28, Section 347(a)).

STATUTES INVOLVED

The following statutes are involved:

(a) A special Act of March 2, 1867, Sec. 1 (14 Stat. 438, c. CLXII):

> " * *That there be established, and is hereby established, in the District of Columbia, a University for the education of youth in the liberal arts and sciences, under the name, style and title of 'The Howard University'."

(b) The Act of June 16, 1882, Sec. 3 (22 Stat. 104, c. 222; D. C. Code, 1940 Ed., Sec. 47-811), pertaining to Howard University:

> "Sec. 3. That the property, real and personal, of the said University shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution: * * *"

(c) The Act of December 24, 1942 (56 Stat. 1089, c. 826; D. C. Code, 1940 ed., Supp. IV, Sec. 47-801a to f, inclusive), pertaining to exemption of real property in the District of Columbia from taxation, the applicable provisions of which are as follows:

"* * the real property exempt from taxation in the District of Columbia shall be the following and none other:

"Section 1. * * (e) Property heretofore specifically exempted from taxation by any special Act of Congress, in force at the time of approval of this Act, so long as such property is used for the purposes for which such exemption is granted. The Commissioners of the District of Columbia shall report annually to the Congress the use being made of such specifically exempted property, and of any changes in such use, with recommendations.

* * * * * *

"Sec. 3. Every institution, organization, corporation, or association owning property exempt under the provisions of paragraph d to q, inclusive, of section 1 of this Act, shall, on or before March 1, 1943, and on or before March 1 of each succeeding year, furnish the Commissioners of the District of Columbia a report, under oath, showing the purposes for which its exempt property has been used during the preceding calendar year. * * A copy of such report shall be forwarded to the Congress by the Commissioners.

* * * * * *

"Sec. 5. Any institution, organization, corporation, or association aggrieved by any assessment of real property deemed to be exempt from taxation under the provisions of this Act may appeal therefrom to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as provided in sections 3 and 4 of title IX of the District of Columbia Revenue Act of 1939,[1] as amended: *Provided, however,* That payment of the tax shall not be prerequisite to any such appeal."

[1] The figure "9" is obviously a printer's error, since the appellate sections referred to are in title IX of the District of Columbia Revenue Act of 1937 as added by the Act of May 16, 1938 (52 Stat. 371, c. 223; D. C. Code, 1940 ed., Sec., 47-2403 and 47-2404).

SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari. The case involves only the question whether the petitioner's real property which is not used for educational purposes, but is rented to others, is exempt or taxable under a special Act of Congress. The basic statute involved is applicable only to the petitioner, and the petition constitutes nothing more than a request for another hearing.

Statutes exempting property from taxation must plainly and unmistakably grant the exemption if the property is to be relieved of the burden of taxes. Otherwise the property is subject to taxation. The statute here involved exempts the petitioner's property from taxation so long as it is used only for educational purposes. The property taxed is rented to others. It is not used for educational purposes. The decisions of the lower courts followed the general rule of law which has been adopted by an overwhelming majority of the states to the effect that where statutes make the exemption depend upon use of the property, the exemption does not apply to property rented to others.

ARGUMENT

I

The petition should be denied.

The petition does not contain a statement of the reasons relied on for the allowance of a writ of certiorari as required by Rule 38, par. 2. It does not appear from the petition and the record that any of the reasons set forth in Rule 38, par. 5, exist in this case. No federal question, no question of substance relating to the construction or application of the Constitution or a statute of the United States which should be settled by this Court, and no question of general importance is presented.

The decisions of this Court which are cited in the petition, and on which the petitioner relies, involved questions pertaining to the Constitution and laws of other jurisdictions and are not applicable to the present case as indicated in the opinion of the United States Court of Appeals for the District of Columbia, written by the Chief Justice (R. 100, 101). The principal case relied on is *Northwestern University* v. *People*, 99 U. S. 309, which the Court of Appeals clearly distinguished (R. 100). That case was decided upon the question whether the exemption of the university from taxation under its charter of 1851 was a contract which was impaired by the assessment of taxes on the university's property under the new constitution of Illinois adopted in 1870. No such question is involved in the present case. The decision of this Court in the *Northwestern University* case, *supra*, holding that the property there involved was nevertheless exempt although the university received income from the sale or rent of land, constituted nothing more than a determination that the liberal exemption provisions of the university's charter of 1851 was a contract which could not be impaired by the assessment of taxes under the more restrictive provisions of the new constitution and the general law passed in 1872 to give effect thereto. That decision did not hold that exemptions under the general laws of Illinois remained in effect even though the property exempted was rented and produced income. This was pointed out by the Supreme Court of Illinois in *Monticello Seminary* v. *Board of Review* (1911), 249 Ill. 481, 94 N.E. 938, wherein it said, referring to the *Northwestern University* case, *supra* (N.E. p. 939):

> "This decision clearly intended to hold that under the Constitution of 1870 property leased or invested for profit is not used exclusively for a school, even though the income from it is applied for the purposes of the school. * * Nothing was said by the Supreme Court of the United States in the case above cited that indicated that it put a different construc-

> tion on the present Constitution. This court has always followed the construction of the Constitution of 1870 given in that case. People v. Theological Union, 171 Ill. 304, 49 N.E. 559. This court has held that property rented or held by an educational institution 'as an investment, even though the income thereof is used solely for school purposes,' is not exempt. * *"

All other decisions of this Court upon which the petitioner relies are likewise inapplicable to the present case as pointed out by the Chief Justice of the Court of Appeals (R. 101).

The petitioner is a private corporation (*Maiatico Construction Company* v. *United States*, &c., 65 App. D. C. 62, 79 F. 2d 418) which has been granted exemption of its property by a special act of the Congress so long as the property is used only for the purposes set forth in its charter, i.e., the education of youth (p. 2, supra; R. 99). None of the property involved is used for educational purposes (R. 15, 17, 37, 49). The Board of Tax Appeals for the District of Columbia found as a fact that such property is improved by dwellings, apartment houses and commercial property and was rented to various tenants on the tax date here involved (R. 15, 17). This finding of fact has not been questioned. The facts and special exemption statute applicable to this case are of importance only to the petitioner. This Court has recently stated that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia* v. *Pace*, 320 U. S. 698, 702; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285. In the present case the basic exemption statute is not only limited in its operation to the District of Columbia but to a private corporation.

The petitioner urges in support of its petition that the Commissioners of the District of Columbia had no authority to place the property involved on the tax rolls. This contention was made with the Board of Tax Appeals (R. 3) and the United States Court of Appeals for the District of Columbia

(R. 24). The only authority relied upon in support of this view is Section 1(e) of the Act of December 24, 1942, *supra*, and the report of the Congressional Committees (Pet. brief, p. 10) on said Act. It is obvious, since neither the Board of Tax Appeals nor the United States Court of Appeals for the District of Columbia commented upon this point, that the lower tribunals found no merit in such contention. Respondent respectfully points out that there is nothing in the Act of June 16, 1882, *supra*, or the Act of December 24, 1942, *supra*, that denies the fundamental authority of the Commissioners to administratively determine the exempt or taxable status of real property in the District under the provisions of special and general statutes applicable thereto. The decisions of the Board of Tax Appeals and the United States Court of Appeals plainly were founded upon the Act of March 2, 1867 (Pet. brief, p. 14) and the Act of 1882, *supra*. It is therefore clear that the assessments involved have not in any way changed the status of Howard University or violated the intention of the Congress. On the contrary, the intent of the Congress has been followed. In light of the foregoing, it thus appears that the petitioner, having lost its appeal in the two lower courts, merely seeks another hearing. This is not a reason why this Court, in the exercise of its discretion, should grant the writ of certiorari. See *Magnum Company* v. *Coty*, 262 U. S. 159, 163.

II

Statutes granting exemption from taxation should be strictly construed and doubts resolved in favor of the Government.

It is stated on page 11 of petitioner's brief that taxing acts are not to be extended by implication beyond the clear import of the language used, and that doubts are to be resolved against the Government and in favor of the taxpayer. Such is the general rule with respect to the question whether a statute *levies* a tax. *Gould* v. *Gould*, 245 U. S. 151. A different

rule prevails, however, if the question is whether a statute *exempts* property from taxation. It is well settled in the District of Columbia that statutes exempting property from taxation are to be strictly construed in favor of the taxing authority and against the taxpayer, and that exemption will not be granted unless the statute so provides in terms too plain to be mistaken. *Hebrew Home for the Aged* v. *District of Columbia*, 79 U. S. App. D. C. 64, 142 F. 2d 573; *Combined Congregations of the District of Columbia* v. *Dent*, 78 U. S. App. D. C. 254, 140 F. 2d 9. The rule is clearly stated in *Chicago Theological Seminary* v. *Illinois*, 188 U. S. 662, 672:

> "The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

To the same effect is *Cornell* v. *Coyne*, 192 U. S. 418, 431.

III

Section 2 of Petitioner's charter does not pertain in any way to tax exemption.

Petitioner refers on page 11 of its brief to what is termed "The $50,000.00 limitation to tax exemption put upon the University property by Congress * *" and removal of the limitation by amendment of the petitioner's charter in 1938. The reference is made to section 2 of the Act of March 2, 1867, which created Howard University, as amended by the Act of May 13, 1938 (Pet. brief, p. 14, 15). Said Section 2 in no wise relates to tax exemption. The limitation of $50,000 in that section as originally enacted clearly applies solely to "net annual income" over and above and exclusive of the receipts for the education and support of the students of the University. The amendment of said section by the Act of May 13, 1938, which removed the limitation, did not have any effect what-

soever upon the exempt or taxable status of the petitioner's property.

In deciding this case, the United States Court of Appeals for the District of Columbia adopted as the law in the District of Columbia the general rule of law followed in the overwhelming majority of the states that, under tax exemption statutes making the exemption depend upon the use of the property for favored purposes, as is the case here, the exemption does not apply to property rented to others. The decision, therefore, conforms to the general policy adopted by practically all of the states.

CONCLUSION

For the reasons hereinbefore stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

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